

## 48A C.J.S. Judges § 324

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### D. Objections to Judge and Proceedings Thereon

##### 3. Determination of Objection to Judge

## § 324. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(4)

**Motions to disqualify a judge should be acted on promptly, and under some statutes, the determination of the question of disqualification is for the judge while under others, the judge may or must in a proper case refer the question to another court or judge.**

Motions to disqualify a judge should be acted on promptly when called up before, or presented to, a court.<sup>1</sup> A party making such a motion is entitled to obtain a ruling by the court,<sup>2</sup> and the judge may not act further in any judicial capacity in connection with the action or proceeding in question except to make the proper transfer of the case or take the appropriate steps for the selection of another judge.<sup>3</sup> Nonetheless, a trial judge is not required to rule on a motion to disqualify himself or herself until the motion is actually filed.<sup>4</sup>

Under some statutes, the judge alone determines in the first instance the question of disqualification,<sup>5</sup> and the judge is not required to assign the recusal motion to another judge for hearing.<sup>6</sup> Except as otherwise provided, however, the judge may, but need not, call in another judge to hear the charge,<sup>7</sup> and another qualified judge is not prohibited from deciding the question when such judge is properly requested to do so.<sup>8</sup>

Under other statutes, the question is usually determined by another judge or court<sup>9</sup> or by a judge not named in the motion for substitution.<sup>10</sup> The question is determined by a hearing had before the chief justice of the highest court of appeal,<sup>11</sup> or by the presiding or supervising judge or justice of the court or district,<sup>12</sup> or by a judge agreed on by the parties.<sup>13</sup> Where other judges

preside over the court with the judge who is challenged, the question ordinarily is decided by the court.<sup>14</sup> When the asserted basis for recusal is personal conduct of the trial judge that generates serious issues about his or her personal misconduct, then the trial judge must permit another judge to decide the motion for recusal.<sup>15</sup>

Referral of a motion to recuse to another judge for hearing is required only when a valid ground for recusal is set forth in a properly filed motion or affidavit<sup>16</sup> and when an appropriate issue of fact is presented by the statement charging bias and prejudice.<sup>17</sup> If the alleged disqualification does not amount to a constitutional or legal disqualification, the judge may determine the question, and the decision is not reviewable.<sup>18</sup>

Where a judge of one circuit decides that an application for a disqualification is legally insufficient, a judge of another circuit whose jurisdiction depends on the prior legal disqualification of the first judge may not adjudicate such question<sup>19</sup> or peremptorily assume jurisdiction.<sup>20</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Where the alleged disqualification of a judge does not amount to a constitutional or legal disqualification, the question is left to the enlightened conscience, delicacy of feeling, and sense of fairness possessed by the individual judge. *Bishop v. State*, 218 Md. App. 472, 98 A.3d 317 (2014).

Judge was not legally disqualified under Judiciary Law to preside at nonjury trial in prosecution of defendant for aggravated family offense, criminal contempt in the second degree, and tampering with a witness in the fourth degree, and therefore judge's decision as to the need for recusal was a matter of discretion and personal conscience. *N.Y. Judiciary Law § 14. People v. Smith*, 163 A.D.3d 1004, 80 N.Y.S.3d 434 (2d Dep't 2018).

Family Court judge providently exercised her discretion in declining to recuse herself, in father's action seeking to modify prior custody order so as to award him sole physical custody of child; although mother argued that judge should have recused herself based on mother's assertion that she had filed complaint in federal court in which judge was named as defendant, judge had not been served with complaint. *N.Y. Judiciary Law § 14. Wilson v. Brown*, 162 A.D.3d 1054, 80 N.Y.S.3d 343 (2d Dep't 2018).

## [END OF SUPPLEMENT]

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### Footnotes

1 Ariz.—*State v. Myers*, 117 Ariz. 79, 570 P.2d 1252 (1977).

Ind.—*Briscoe v. State*, 180 Ind. App. 450, 388 N.E.2d 638 (1979).

Mo.—*Matter of Buford*, 577 S.W.2d 809 (Mo. 1979).

2 Ga.—*Savage v. Savage*, 234 Ga. 853, 218 S.E.2d 568 (1975).

#### Duty to pass on application

U.S.—*Dubnoff v. Goldstein*, 385 F.2d 717 (2d Cir. 1967).

- 3 § 335.
- 4 Okla.—Graham v. Graham, 1967 OK 210, 434 P.2d 245 (Okla. 1967).
- 5 Cal.—In re Morelli, 11 Cal. App. 3d 819, 91 Cal. Rptr. 72 (2d Dist. 1970).  
Colo.—City of Trinidad v. District Court In and For Las Animas County, 196 Colo. 106, 581 P.2d 304 (1978).  
N.J.—Bonnet v. Stewart, 155 N.J. Super. 326, 382 A.2d 930 (App. Div. 1978).
- 6 U.S.—In re Wolverine Proctor & Schwartz, LLC, 397 B.R. 179 (Bankr. D. Mass. 2008).  
Ill.—People v. Antoine, 335 Ill. App. 3d 562, 269 Ill. Dec. 647, 781 N.E.2d 444 (1st Dist. 2002).
- 7 Iowa—State v. Smith, 242 N.W.2d 320 (Iowa 1976).  
N.C.—North Carolina Nat. Bank v. Gillespie, 291 N.C. 303, 230 S.E.2d 375 (1976).  
**Hearing before other judge preferred**  
W. Va.—Stern Bros., Inc. v. McClure, 160 W. Va. 567, 236 S.E.2d 222 (1977).
- 8 U.S.—U. S. v. Zagari, 419 F. Supp. 494 (N.D. Cal. 1976).
- 9 Kan.—Hulme v. Woleslagel, 208 Kan. 385, 493 P.2d 541 (1972).  
Or.—Foster v. Zeiler, 283 Or. 255, 584 P.2d 243 (1978).  
**Only if conditions of rule governing recusal are met**  
Ga.—Crosbie v. State, 304 Ga. App. 613, 697 S.E.2d 278 (2010).
- 10 Ill.—People v. Bell, 276 Ill. App. 3d 939, 213 Ill. Dec. 351, 658 N.E.2d 1372 (2d Dist. 1995).
- 11 Ohio—Walker v. Stokes, 54 Ohio App. 2d 119, 8 Ohio Op. 3d 237, 375 N.E.2d 1258 (8th Dist. Cuyahoga County 1977).
- 12 Ohio—Adams v. Watts, 67 Ohio App. 81, 21 Ohio Op. 103, 35 N.E.2d 845 (4th Dist. Lawrence County 1940).
- 13 Cal.—Collins v. Nelson, 26 Cal. App. 2d 42, 78 P.2d 758 (2d Dist. 1938).
- 14 Okla.—State v. Martin, 1927 OK 147, 125 Okla. 24, 256 P. 681 (1927).
- 15 D.C.—Gillum v. U.S., 613 A.2d 366 (D.C. 1992).
- 16 La.—Roy v. Roy, 285 So. 2d 867 (La. Ct. App. 4th Cir. 1973).  
Ohio—Household Consumer Discount Co. v. Pokorny, 60 Ohio App. 2d 253, 14 Ohio Op. 3d 232, 396 N.E.2d 803 (8th Dist. Cuyahoga County 1978).
- 17 Cal.—Oak Grove School Dist. of Santa Clara County v. City Title Ins. Co., 217 Cal. App. 2d 678, 32 Cal. Rptr. 288 (1st Dist. 1963).  
Fla.—Orlowitz v. Orlowitz, 121 So. 2d 55 (Fla. 3d DCA 1960).
- 18 La.—Montegut v. Louisiana State Bd. of Dentistry, 68 So. 2d 634 (La. Ct. App. 1st Cir. 1953).  
Md.—Ex parte Bowles, 164 Md. 318, 165 A. 169 (1933).

19 Fla.—[Theo. Hirsch Co. v. McDonald Furniture Co.](#), 94 Fla. 185, 114 So. 517 (1927).

20 Fla.—[Theo. Hirsch Co. v. McDonald Furniture Co.](#), 94 Fla. 185, 114 So. 517 (1927).

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